APPENDIX A

OPINION OF COURT OF APPEALS OF MARYLAND

JOSEPH F. LUCKE

v.

COMMISSIONER OF PERSONNEL of the State of Maryland et al.

No. 194.

Court of Appeals of Maryland
April 7, 1967
(228 A2d 313)

Civil service employee was discharged by the Commissioner of Personnel. On appeal, the Baltimore City Court, Dulany Foster, C. J., affirmed the commissioner's order of discharge and the employee appealed. The Court of Appeals held that fact that court docket contained erroneous entry of judgment nisi did not extend employee's time for filing an appeal with the Court of Appeals.

Appeal dismissed.

1. Judgment

Principal purpose of entry of judgment nisi is to enable an aggrieved party to file motion for new trial in cases tried on the facts by the court.

2. Municipal Corporations 218(9)

Judgment by city court affirming commissioner of personnel's dismissal of employee was final judgment which was immediately appealable in the manner provided by law for appeals from law courts in civil cases. Code 1957, art. 41, §§ 244-256, 255(e); Maryland Rules, Rule 564b.

3. Municipal Corporations 218(9)

Fact that court docket contained erroneous entry of judgment nisi in civil service employee's appeal from commissioner of personnel's order discharging employee did not extend employee's time for filing an appeal to the Court of Appeals. Code 1957, art. 41, §§ 244-256, 255(e); Maryland Rules, Rule 564b.

Leonard J. Kerpelman, Baltimore, for appellant.

John W. Sause, Jr., Sp. Atty., Centreville (Francis B. Burch, Atty. Gen., and Franklin Goldstein, Asst. Atty. Gen., Baltimore, on the brief), for appellees.

Before HAMMOND, C. J., and HORNEY, OPPENHEIMER, BARNES and McWILLIAMS, JJ.

PER CURIAM.

The appellant, Joseph F. Lucke, was suspended from his position in the Clerk's Office of the Municipal Court of Baltimore City on July 17, 1964, pending a hearing on formal charges filed with the Commissioner of Personnel under the Merit System Law, Code (1957), Article 64A. The Commissioner, in a written decision, found that Lucke had written and sent various anonymous communications to the Chief Judge of the Municipal Court, and that their nature warranted the appellant's dismissal from State service. The appellant appealed to the Baltimore City Court pursuant to the Administrative Procedure Act, Code (1965 Repl. Vol.), Art. 41, sec. 255. The court (Cullen, J.) remanded the case for further hearing because the appellant's new counsel was unfamiliar with the facts and the appellant himself was not present to testify.

The Commissioner of Personnel entered a "Supplemental Order" on June 29, 1965, again finding that Lucke was the author of the anonymous communications referred to in the charges and directing that his services be terminated effective on the date of his suspension. A second appeal to the Baltimore City Court followed from this order of the Commissioner. After full argument, the Court (Foster, J.) on March 29, 1966, filed a memorandum opinion carefully considering and rejecting each of the appellant's contentions. The opinion concluded:

> "The appellant, having failed to convince the Court that there was any prejudicial error in the proceedings before the Commissioner of Personnel, or that any of appellant's rights had been violated, and there admittedly being substantial evidence before the Commissioner on which to base his decision, *the Commissioner of Personnel is hereby affirmed.*
>
> /s/ Dulany Foster,
> *Judge.*
>
> *March 29, 1966*" (Emphasis supplied). (Sic, in Opinion)

Counsel for the appellant admitted, before this Court, that, having represented the appellant in his second appeal to the Baltimore City Court, a copy of the lower court's memorandum and order was received by him. The appeal to this Court was entered on May 2, 1966, *more than 30 days after* the date of the March 29, 1966, order of the Baltimore City Court. We agree with the appellee that the appeal must be dismissed because it was filed beyond the period permitted by Maryland Rule 812. See also Code (1957), Art. 41, sec. 256.

There could be no doubt that the appeal was filed too late, but for the docket entries made by the clerk of the Baltimore City Court:

> "3/29/66, The decision of The Commissioner of Personnel is hereby affirmed. Memorandum Opinion and Order of The Court (Judge Dulaney [sic] Foster filed.
>
> "3/29/66, Judgment nisi in favor of appellees (defendants).
>
> "4/1/66, Judgment made absolute in favor of the appellees (defendant), for costs of suit."

The appellant claims that he had a right to rely on these docket entries, and it is true that were "4/1/66" taken as the date of the judgment appealed from, the appeal to this Court was timely filed.[1] We hold, however, that the entry of a judgment nisi in favor of the appellees was erroneous, and under the circumstances presented here, the appellant was not privileged to rely on the erroneous state of the docket.

(1)

[1, 2] The principal purpose of the entry of a judgment nisi is to enable an aggrieved party to file a motion for a new trial in cases tried on the facts by the court. Merlands Club, Inc. v. Messall, 238 Md. 359, 208 A.2d 687 (1965). Proceedings under the Administrative Procedure Act, however, do not include provision for a new trial. Instead, the reviewing court—in this instance, the Baltimore City Court—is given broad discretion to order the taking of new evidence in open court or before the agency, or where justice requires, to remand the case for further proceedings. Art. 41, sec. 255(e). Through

[1] May 1, 1966 fell on a Sunday.

the medium of this intermediate appeal, the aggrieved party is given a complete opportunity to "show cause" why an administrative judgment should not be entered. Cf. Hodgson v. Phippin, 159 Md. 97, 150 A. 118 (1930). Indeed, Judge Cullen on the appellant's first appeal, remanded the case to the agency so that further testimony could be taken and the matter further considered. Maryland Rule 564b, relating to the entry of judgment nisi, does not apply to proceedings under the Administrative Procedure Act, Art. 41, Ch. 24, (sections 244—256). The judgment nisi was entered in error. The judgment of the Baltimore City Court on March 29, 1966, affirming the Commissioner of Personnel, was a final judgment, immediately appealable "in the manner provided by law for appeals from law courts in other civil cases." Art. 41, sec. 256.

(2)

[3] The fact that the docket contained the erroneous entry of a judgment nisi cannot, as a matter of law, extend the appellant's time for filing an appeal. In Baltimore Luggage Co. v. Ligon, 208 Md. 406, 118 A.2d 665 (1966), the case which led to the revision of the rules relating to the entry of judgments nisi, the trial court led counsel to believe that he would enter a judgment nisi on the jury's special verdict, but, without informing either counsel, directed the clerk to enter a final judgment. Under the provisions of the then existing Maryland Rule, a judgment nisi, if entered, would have been legally improper under the facts of that case. It was held that the parties could not, as a matter of law, rely entirely on the judge's indicated purpose, but were charged with knowledge that the entry of a judgment nisi had "no place" in the case and that a final judgment was, in fact, entered on the court records.

While Baltimore Luggage presages our holding in the case before us, the decision in Bond v. Citizens National Bank, 65 Md. 498, 4 A. 893 (1886), controls it. In *Bond*, a party moved to strike out a judgment on grounds of irregularity consisting of the failure to enter the judgment in the original trial docket before entry in the judgment record. Because of the omission, the party lost the right to appeal from the judgment, but the Court stated:

> "This, as a ground for striking out the judgment, is wholly untenable. The defendants' attorney could have easily learned of the entry of the judgment by examination of the record, or by inquiry of the clerk. It does not appear that he did either; though he says he did examine the original trial docket, and found no entry of the judgment."

If no complaint will lie by a party who is alleged to have been misled by an *absent* docket entry, no better case is posed by a party who is allegedly misled by an erroneous docket entry, especially where his attorney was promptly notified of the court's order of March 29, 1966, affirming the decision of the Commissioners of Personnel. This order is at law a final judgment, for, as already discussed, a judgment nisi is not contemplated when a court rules on an appeal under the Administrative Procedure Act.

(3)

We add that we have carefully reviewed the merits of the appellant's contentions, and were it necessary, we would rule that his dismissal was legally justified.

Appeal dismissed, the appellant to pay the costs.

APPENDIX B

MANDATE

Court of Appeals of Maryland

No. 194, September Term, 1966

JOSEPH F. LUCKE v. Commissioner of Personnel of the State of Maryland, et al	Appeal from the Baltimore City Court. Filed June 17, 1966. January 4, 1967: Motion to dismiss appeal filed. January 23, 1967: Answer to above motion filed. April 7, 1967: Appeal dismissed, the appellant to pay the costs. Per Curiam filed. April 17, 1967: Motion for reargument filed. April 20, 1967: Answer to above motion filed. May 1, 1967: Motion for reargument denied.

* * * * * *

STATE OF MARYLAND, Sct:

I do hereby certify that the foregoing is truly taken from the record and proceedings of the said Court of Appeals.

In testimony whereof, I have hereunto set my hand as Clerk and affixed the seal of the Court of Appeals, this eighth day of May A.D. 1967.

J. LLOYD YOUNG

Clerk of the Court of Appeals of Maryland.

* * * * * *

APPENDIX C

Rules of Commissioner of Personnel

RULE 45—DISCIPLINARY ACTION

A. Disciplinary actions shall include official reprimand, disciplinary suspension without pay, involuntary demotion, rejection on probation, removal under charges from a position in the classified service and permanent disqualification from future employment in the classified service.

B. Disciplinary actions shall be taken only in accordance with the provisions of the Merit System Law and Personnel Rules. No disciplinary actions shall be allowed because of the religious or political opinions or affiliations of any employee or because of his failure to contribute to any fund.

RULE 46—DISCIPLINARY SUSPENSION

The appointing authority and in his absence the officer acting in his place, may for disciplinary purposes suspend without pay an employee in his organization unit from the performance of his duty, on account of misconduct, negligence, inefficiency, insubordination disloyalty, or any other reason satisfactory to the Commissioner. In each case, regardless of the period of disciplinary suspension, written notice of such action shall be on the form provided by the Commissioner, which states the reasons for the suspension and the duration thereof, and shall be given to the suspended employee or mailed to his last known address. The prescribed number of copies of such notice shall be furnished forthwith to the Commissioner. An employee suspended for a period aggregating more than fifteen working days in any calendar year may appeal such additional suspension or suspen-

sions to the Commissioner. After an investigation, the Commissioner shall determine whether the suspension is justified and shall approve, change or modify the suspension, according to such determination.

RULE 47—CAUSES FOR REMOVAL

Any employee in the classified service may be permanently removed from his position only for cause and, except in the case of rejection on probation, only upon written charges and after an opportunity to be heard in his own defense, and in no case on account of his religious or political opinions or affiliations or for refusing to contribute to a political fund or render political services. The following shall be sufficient cause of removal, though removal may be for causes other than those enumerated:

A. That the employee is incompetent or inefficient in the performance of his duty.

B. That the employee has been wantonly careless or negligent in the performance of his duty or has been brutal in his treatment of public charges, fellow employees, or other persons.

C. That the employee has some permament or chronic physical or mental ailment or defect that incapacitates him for the proper performance of his duties.

D. That the employee has violated any lawful official regulation or order or failed to obey any lawful and reasonable direction given by his superior officer when such violation or failure to obey amounts to insubordination or serious breach of discipline which may reasonably be expected to result in a lower morale in the organization or to result in loss or injury to the State or the public.

E. That the employee has been wantonly offensive in his conduct toward fellow employees, wards of the State, or the public.

F. That the employee has taken for personal use, a fee, gift, or other valuable thing in the course of his work or in connection with it when such fee, gift, or other valuable thing is given him by any person in the hope or expectation of receiving a favor or better treatment than that accorded other persons.

G. That the employee is engaged in a private business or in a trade or occupation when the duties of his position as prescribed by law or regulation require his entire time for their performance.

H. That the employee has failed to pay or make reasonable provision for the future payment of just debts when annoyance is caused a superior officer or scandal is caused to the service by such failure.

I. That the employee has been guilty of a violation or violations of Section 40 of the Merit System Law.

J. That the employee has been convicted of a criminal offense or of a misdemeanor involving moral turpitude.

K. That the employee, through negligence or willful conduct, has caused damage to public property or waste of public supplies.

L. That the employee has been guilty of a violation or violations of the provisions of Chapter 122 of the Acts of 1908, commonly known as the Corrupt Practices Act, or using, threatening to use, or attempting to use political influence or the influence of any State employee or officer in securing promotion, transfer, leave of absence, or increased pay.

M. That the employee has willfully made a false official statement or report.

N. That the employee has been guilty of conduct such as to bring the classified service into public disrepute.